Supreme Court, U.S.
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No. 01-361

IN THE

Supreme Court of the United States

CHRISTOPHER T. HARRIS,

Petitioner,

v.

CITY OF DORAVILLE, GEORGIA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

PHILIP W. SAVRIN
FREEMAN MATHIS & GARY, LLP
Attorneys for Respondents
100 Galleria Parkway
Suite 1600
Atlanta, Georgia 30339-5948
(770) 818-0000

169675

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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OPINIONS AND JUDGMENT BELOW

Within the Supplemental Appendix to the Petition for Writ of Certiorari, Petitioner has provided the Summary Judgment Order of the Honorable Julie E. Carnes of the United States District Court for the Northern District of Georgia, as well as the decisions of the United States Court of Appeals for the Eleventh Circuit that affirmed the award of summary judgment and denied Petitioner's request for rehearing.

STATEMENT OF JURISDICTION

Jurisdiction to consider the Petition for a Writ of Certiorari appears to be appropriate in this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This action arises under the Fourth Amendment to the Constitution of the United States and 42 U.S.C. § 1983, and case law construing those provisions.

STATEMENT OF THE CASE

Christopher T. Harris, the petitioner herein, filed a civil rights lawsuit against the City of Doraville, Georgia, and certain of its police officers, arising from the search of his property and his arrest and subsequent criminal proceedings for sexual offenses relating to minors. *See* Harris' complaint [Doc. 1]. The following is a correction of the misstatement of facts written by Harris in his petition.

On May 1, 1996, Harris discovered some of his many firearms missing. Christopher Harris Dep., pp. 119-21; Officer

Beth Stock Dep., p. 9; 5/1/96 Incident Report of Officer Beth Stock. Allegedly fearing that his mentally disturbed adult son might have the weapons and use them to hurt himself or others, Harris called the Doraville Police for assistance using 911. Harris Dep., pp. 199-21; Stock Dep., p. 9; 5/1/96 Stock Report. Doraville dispatched police officer Beth Stock to investigate the alleged firearms theft. Stock Dep., p. 9; 5/1/96 Stock Report. Christopher Harris' son, David Harris, did in fact have at least one of Mr. Harris' guns, which he used to shoot Mr. Harris multiple times. Complaint, ¶ 2; Harris Dep., pp. 16, 130; 5/1/96 Stock Report (David Harris eventually plead guilty to aggravated assault for shooting his father.)

When Officer Stock arrived outside the Harris home, Officer Stock witnessed David Harris brandishing and shooting a weapon, observed that Christopher Harris had been shot, rendered medical assistance to him, and called for police backup and medical support. Stock Dep. pp. 23, 28-29, 34; 5/1/96 Stock Report. Backup officers and medical personnel then arrived on the scene, and Harris was taken away by ambulance. Stock Dep., pp. 28, 34; Detective Timothy Baggett Dep., p. 7; 5/1/96 Stock Report.

Because Officer Stock did not apprehend the David Harris, and his whereabouts were unknown when the other officers arrived on the scene, the police officers began to search for David Harris and established a perimeter around the crime scene. Stock Dep., pp. 28, 34; Baggett Dep. p. 7; 5/1/96 Stock Report; 5/3/96 Supplemental Report of H.M. Pritchett, attached to Pritchett Affidavit.

While clearing the Harris home for weapons and the suspect on May 1, 1996, Defendant Pritchett located a framed picture of a nude juvenile female, when he moved a gun case. 5/3/96

Pritchett Supplemental Report. Officer Pritchett noted this fact, and pointed it out to Defendant Brown. 5/3/96 Pritchett Supplemental Report. Pursuant to the task of clearing the crime scene, Doraville police officers seized weapons located in the home as evidence and for safety purposes, but the weapons were returned to plaintiff shortly thereafter. 5/3/96 Pritchett Supplemental Report; Harris dep., p. 131.

Defendants Edwards, Pritchett, Davis, and Stock engaged in no conduct for which they can even arguably be held liable to the Harris after May 1, 1996, and Harris filed his complaint on May 8, 1998.

Defendants subsequently received information that caused them to believe with reasonable certainty that the Harris' home contained evidence that Harris had violated Georgia's child sexual exploitation laws. Timothy Baggett Aff., ¶ 4. Defendant Baggett detailed the information in support of this belief in his May 9, 1996 Application and Affidavit for a Search Warrant. Baggett Aff., ¶ 4; May 9, 1996 Application and Affidavit for a Search Warrant, attached to Baggett Aff. Specifically, these sources indicated that Harris had filmed and retained a videotape of two juvenile females acting in a homosexual manner with one another, filmed and retained at least one videotape of a juvenile female exposing her breasts to him, possessed videotape of very young girls behaving in a sexual manner, and possessed photos of nude juveniles, at least some of which were computer-altered to have adult genitals. *Id.* One juvenile informant turned over to defendants romantic letters Harris wrote to another juvenile in which he calls her "sexy." *Id.* Based on this and other incriminating information, defendant Baggett applied for and obtained a search warrant for the Harris home. *Id.* During the resulting search, evidence of criminal violations was uncovered. Baggett Aff., ¶ 7.

While executing the search warrant, defendants seized only those items specifically listed in the warrant and those which they believed tended to corroborate the plaintiff's bent of mind toward sexual attraction to children, as well as his inappropriate relationships with juvenile females, including photographs, letters, a Zodiac printout, files, college term papers, poetry, computer equipment and computer files, videotapes, a camcorder, books, and magazines. *Id.* at ¶ 8. Based on the evidence gathered during the search, defendant Baggett submitted an application for an arrest warrant, which in fact issued. *Id.* at ¶ 9.

Upon further review of the evidence seized from the Harris home, defendants discovered a videotape depicting a juvenile female engaged in a sexually suggestive dance being filmed by the plaintiff in which she exposes her breasts. Based on this and other information, defendant Baggett applied for a second arrest warrant against the plaintiff, this time for a felony violation of O.C.G.A. § 16-12-100, and the warrant in fact issued. *Id.* at ¶ 11.

Based on the foregoing facts, Harris claimed that his constitutional rights were violated. The district court found otherwise in a comprehensive 56-page summary judgment opinion by the Honorable Julie E. Carnes. The court also noted that Harris refused to file a substantive response to defendants' motion for summary judgment, despite repeated warnings from the court to do so, and that Harris had come forward with no evidence to support his claims. The Eleventh Circuit agreed with the district court's analysis, and affirmed. The Eleventh Circuit thereafter denied Harris' rather threatening petition for rehearing, and the instant certiorari petition followed.

Harris is *pro se*.

SUMMARY OF ARGUMENT

Petitioner does not reference Rule 10 of this Court's rules in his pleading, but it appears that he *might* be seeking review under Rule 10(c). Under that subparagraph, a petitioner may seek review if the Eleventh Circuit "has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

Petitioner's "questions" do not meet this criteria, as they essentially criticize the manner in which the Courts below construed the factual record and applied those facts to long-standing constitutional principles. Simply stated, Petitioner did not bother to respond to defendants' motion for summary judgment, and came forward with absolutely no evidence to establish the violation of a constitutional right or overcome defendants' defense of qualified immunity. In the words of the Eleventh Circuit, "Indeed, . . . we note that even if Harris could demonstrate a violation of his Fourth Amendment rights, he wholly failed to carry his burden of persuasion in the district court. Once an officer or official has raised the defense of qualified immunity, the burden of persuasion is on the plaintiff." *Christopher T. Harris v. City of Doraville, Georgia et al.*, No. 00-13645, slip op. at 3 (11th Cir. Apr. 6, 2001) (punctuation and citation omitted). Under settled law in the Eleventh Circuit as well as this Court, the officers comported with all constitutional norms, and no basis for individual or municipal liability has been shown.

Consequently, the instant petition for certiorari review should be denied.

REASONS FOR DENYING THE WRIT

In *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70 (1955), this Court discussed the dimensions of its discretionary review and why cases, such as this one, are not among those for which such review will be granted:

> [W]e have considered anew whether this case is one in which "there are special and important reasons" for granting the writ of certiorari, as required by Supreme Court Rule 19, 28 U.S.C.A.
>
> * * *
>
> A federal question raised by a petitioner may be "of substance" in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants . . . "Special and important reasons" imply a reach to a problem beyond the academic or episodic. This is especially true where the issues involved reach constitutional dimensions, for then there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion.

Rice, 349 U.S. at 616 (citations omitted).

Here, Petitioner claims as a threshold matter that the courts below, because of "apparent prejudice" against him, overlooked facts and misconstrued the record. Even if true, this issue does not warrant certiorari review as it does not involve "an important question of federal law." Indeed, as Rule 10 specifically provides,

certiorari review is "rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Accordingly, petitioner's request for certiorari review based on the lower courts' interpretations of the factual record should be denied. Furthermore, Petitioner's request for certiorari review based on the lower courts' clear application of these facts to settled Eleventh Circuit *and Supreme Court* law (Questions 5 and 6) are similarly unavailing.

Petitioner's Questions 1, 2, 3, and 4

These questions present nothing for review. Plaintiff simply takes issue with the discovery rulings of the district court, and, accordingly, they are dealt with in one section. As an initial matter, there is no "equitable litigation" as Harris argues in question 3. Harris confuses his sexual exploitation of children charge in state court with the civil litigation he subsequently initiated in federal court. Harris details the procedural history of his sexual exploitation of children charge in a futile attempt to cloud the fact that *this appeal* concerns the district court's entry of final judgment against him, not the status of his criminal charges. Harris' argument that he has "equitable litigation" underway in another court that was "of fundamental merit" to his civil rights claims in the district court has no merit.

According to Harris, the district court erred in not staying the civil case until his criminal charge was resolved. Contrary to the assertions in his brief, Harris does not have any "equitable litigation" underway. Harris concedes that he uses the phrase "equitable litigation" to refer to his pending felony sexual exploitation of children charge. Presumably, Harris uses this language to meet the test of the *now defunct* Enelow-Ettelson doctrine. *See Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 278, 108 S. Ct. 1133, 1137 (1988);

Feldspar Trucking Co. v. Greater Atlanta Shippers Assoc., Inc., 849 F.2d 1389 (11th Cir. 1988). The Enelow-Ettelson doctrine held that an order by a federal court staying or refusing to stay its own proceedings might be appealable if two conditions were met: (1) the action in which the order was entered must be one that was by its nature an action at law, and (2) the order must based on some matter that would have been considered an equitable defense or counterclaim before the merger of law and equity. *See Gulfstream Aerospace Corp.*, 485 U.S. at 281, 108 S. Ct. at 1139. Calling this doctrine "deficient in utility and sense," the Supreme Court abolished it. *See id.* Harris first raised this argument in a frivolous appeal of the district court's discovery rulings prior to final judgment. As this doctrine was abolished in 1988, Harris may not, by the application of misnomers, use it in an attempt to obtain a reversal of the district court's judgment, and his question presents nothing for this court to review.

There was no basis on which the district court should have stayed the litigation brought by Harris, as he argues in question 3. A stay is an equitable remedy, and as such requires that the movant have "clean hands." *See Federal S & L Ins. Corp. v. Two Rivers Assoc, Inc.*, 880 F.2d 1267, 1272 (11th Cir. 1989) (equitable remedy may be denied if movant has "unclean hands"). Harris did not, however, have clean hands in this case because his stay request was nothing more than an attempt to delay the case and to circumvent prior court orders relating to the discovery of materials in an ongoing criminal investigation. Harris tried *five separate times* to circumvent the district court's order relating to discovery of certain files relating to a pending child exploitation charge. *See* Order of April 12, 2000, p. 4 [Doc. 161-4]. The district court denied his repeated attempts to have the ruling changed, and district courts are accorded broad discretion in resolving discovery disputes. *See Malautea v. Suzuki Motor Co.*, 987 F.2d 1536, 1542 (11th Cir. 1993). The orders in this

case show a sound exercise of that discretion, and nothing in questions 1-4, relating to the court's discovery orders, presents a question for review.

Harris argues in questions 1 through 4 that one of his criminal cases was *not* ongoing (and therefore he was entitled to discovery relating to it), and that the prosecutor's not presenting the case to the grand jury was a constitutional violation. The appropriate standard in reviewing the denial of a stay is abuse of discretion, and Harris has not shown that the district court abused its discretion. Indeed, the district court detailed its reasons for denying the stay, and they are sound. The district court determined earlier that since the case could be reopened at any time (and was not dismissed), Harris had no right to discover materials that were part of an ongoing criminal investigation. *See* Order of April 20, 1999, pp. 7-8 [Doc. 75-7]. Harris subsequently filed a motion for reconsideration that was denied. *See* Order of January 20, 2000, p. 7 [Doc. 139-7]. Harris filed his motion for immediate stay merely as a *third* attempt at obtaining access to materials the district court had repeatedly denied him as being part of an ongoing criminal investigation. *See* Order of January 20, 2000, p. 13 [Doc. 139-13]. Undeterred, Harris was denied a fourth and fifth attempt at the same materials, in addition to an interlocutory appeal and an "emergency motion" to the Eleventh Circuit. *See* Order of February 23, 2000, pp. 3-4 [Doc. 146-3]; Order of April 12, 2000, p. 4 [Doc. 161-4].

As the record supports the district court's conclusion that plaintiff's motion for an immediate stay was merely another attempt to seek discovery of materials to which the court had previously denied him access more than once (and Harris concedes that this was a reason he filed the motion for a stay), this Court should not interfere with the district court's exercise

of discretion. *Accord Barfield v. Brierton*, 83 F.2d 923, 932 (11th Cir. 1989).

Harris describes at length the conduct of the district attorney in his criminal case. The district attorney is *not* a defendant in this civil case, however. Harris' question 1 is more properly brought by appealing his criminal case, which he states in his petition that he did, receiving a *denial of certiorari* from the United States Supreme Court in 1999. Harris Petition, pp. 1 and 9. As this Court has already denied certiorari on this exact same issue, Harris presents nothing for review by taking a second bite at the apple.

Even if this Court were to look at the issues in question 1 this time around, the case cited by petitioner, *Klopfer v. State of North Carolina*, 386 U.S. 213, 87 S. Ct. 988 (1967) is inapplicable to the case at bar since in that case the accused could be tried at any time under the original indictment and thus there was an indefinite continuation of a pending indictment. As petitioner concedes, he has *not* been indicted. The primary pre-indictment time restriction is the statute of limitations. *See United States v. Marion*, 404 U.S. 307, 322, 92 S. Ct. 455 (1971).

As for his "constitutional rights to a speedy trial" argument, "Constitutional speedy trial questions involve issues of fact that should be resolved by a court having jurisdiction of the criminal prosecution." *Garrett v. Arrington*, 245 Ga. 47, 262 S.E.2d 808, *cert. denied*, 446 U.S. 968, 100 S. Ct. 2948 (1980). The proper court is the state court in which his criminal charges were brought, not the federal district court where he brought civil rights claims against the City of Doraville and its officers. Again, Harris raised the issue in his criminal proceeding, and appealed the adverse decision all the way to this Court in 1999. His second attempt to appeal the exact same issues presents

nothing for this Court to review. Harris sued the City of Doraville and individual police officers that were involved with his arrest, but the DeKalb County District Attorney is not a defendant in this litigation. Accordingly, any alleged actions by the district attorney cannot be addressed on appeal from a case in which the district attorney is not even a party.

Although Harris argues in question 2 that the district court abused its discretion, he cites no case law in support of this assertion. The case law is contrary to what Harris contends. *See, e.g., In re Eisenberg*, 654 F.2d 1107, 1111 n.5 (5th Cir. 1981) (a privilege "which may be formally invoked is the federal privilege for production of documents relating to ongoing criminal investigations"); *Swanner v. United States*, 406 F.2d 716, 719 (5th Cir. 1969); *Sirmans v. City of South Miami*, 86 F.R.D. 492, 495 (S.D. Fla. 1980) ("federal privilege for criminal investigative files provides for the protection of files relating to ongoing criminal investigations"). Consequently, the district court was well within its discretion to deny discovery related to an ongoing criminal investigation.

Petitioner's Questions 5 and 6

In his Questions 5 and 6, Harris takes issue with the lower court's ruling on qualified immunity. The district court found that the officers had exigent circumstances and then probable cause for the search and arrest of plaintiff. Petitioner's basis for seeking certiorari review on this issue involves the application of settled qualified immunity principles. No basis exists to question the application of the Eleventh Circuit's and this Court's qualified immunity principles to the facts of the instant case. Simply put, Petitioner does not (and cannot) show that the deputies in his case violated any "clearly established law" of which a reasonable officer would have known. *See Anderson v. Creighton*, 486

U.S. 635 (1987). In this regard, respondents incorporate by reference their summary judgment and appellate briefs, as well as the sound reasoning of the district court in its summary judgment order.

Probable cause has been defined as "a doctrine of reasonable probability and not certainty." *United States v. Magluta*, 44 F.3d 1530, 1535 (11th Cir. 1995). "Probable cause exists where the facts and circumstances within an officer's knowledge and of which he had reasonably trustworthy information are sufficient to warrant a person of reasonable belief that an offense has been or is being committed by the person to be arrested." *Id., quoting United States v. Allison*, 953 F.2d 1346, 1350 (11th Cir. 1992). The existence of probable cause is also a legal question to be resolved by the court. *United States v. Banshee*, 91 F.3d 99, 101 (11th Cir. 1996).

The facts described above, in the statement of facts section, are undisputed by any evidence in the record. Furthermore, petitioner refused to respond to plaintiff's motion for summary judgment with evidence sufficient to overcome defendant's qualified immunity defense. The photograph in his possession of a minor masturbating and the videotape (filmed by Harris) seized from his home which shows minors engaged in sexual acts are sufficient to establish probable cause for his arrest. Furthermore, depictions of children "acting in a homosexual manner towards one another," a videotape of a neighborhood child exposing her breasts, and pictures of children that are computer altered to show exposed genitalia are all sufficient to establish probable cause.

The correct standard for a qualified immunity analysis is whether the officers had "arguable probable cause." *See Montoute v. Carr*, 114 F.3d 181, 184 (11th Cir. 1997).

Furthermore, the correct standard for a search conducted with a warrant is whether a "reasonably well trained officer would have known the search was illegal despite the magistrate's authorization." *See Malley v. Briggs*, 475 U.S. 335, 344 (1986). Those standards were applied by the district court and are met in this case.

Contrary to Harris' contentions, the district court relied on more evidence than the items referred to in his motion for petition. Plaintiff admitted in his deposition that "he had numerous pictures of nude juvenile girls in his house," and officers searching his home found such. *See* Order of May 5, 2000 [169], pp. 49-50. Moreover, there was ample evidence collected by Detective Baggett regarding plaintiff's behavior towards children. *See id.* The district court also cites plaintiff's *own deposition* as evidence regarding the content of a videotape supporting probable cause for his arrest. *See id.* at 51. *Importantly, the plaintiff conceded that a review of the evidence seized from his home would lead one to conclude that he is sexually attracted to young girls*. *See* Harris Deposition, p. 280. Accordingly, there was more than arguable probable cause for his arrest, entitling defendants to qualified immunity.

As for the searches of Harris' home, the first search was determined by the district court to be subject to exigent circumstances as an armed felon (Harris' son) had fled into the home. *See* [169] at 38-39. Plaintiff offered no evidence to rebut this contention. Accordingly, the first nude child photograph was discovered *in plain view* by officers that had lawfully entered his home. *See* [169] at 41. Detective Baggett's subsequent investigation provided probable cause to obtain a search warrant based on the statements of neighborhood children regarding lewd photographs, videotapes, and Harris' acts of exposure, as well as letters written to them by Harris with inappropriate language.

See [169] at 43. Detective Baggett also interviewed an adult, Sondra London, who had lived with Harris and stated that Harris had videotapes depicting very young girls engaged in sexual acts. *See id.* Although Harris contended on appeal that Baggett lied about his investigation, he presented *no evidence* to support that allegation in opposition to summary judgment. *See id.* Accordingly, there is no reason why a reasonably well trained officer would have known the search of Harris' home illegal despite the magistrate's authorization.

In sum, there is no evidence to which Harris can point that establishes the elements of his claims. The officers in this case were entitled to qualified immunity, and Harris has not provided any basis on appeal to reverse the district court's judgment. The law on qualified immunity is clearly established on the facts of this case. Accordingly, petitioner presents nothing that meets this Court's standard for review.

CONCLUSION

The Petition for Writ of Certiorari should be denied because the justiciable concerns of Rule 10 are wholly lacking from this case. The district court and the Eleventh Circuit applied time-honored constitutional principles to the facts as presented in the record, and no basis exists to revisit these very clear and correct rulings.

Accordingly, Respondents pray that the certiorari petition be denied.

Respectfully submitted,

PHILIP W. SAVRIN
FREEMAN MATHIS & GARY, LLP
Attorneys for Respondents
100 Galleria Parkway
Suite 1600
Atlanta, Georgia 30339-5948
(770) 818-0000